In the Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 460-461

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

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vs.

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

BRIEF OF SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES IN OPPOSITION TO PETITION FOR CERTIORARI.

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In this brief the Southern Association of Bell Telephone Employees will be referred to as the "Association" and Southern Bell Telephone and Telegraph Company will be referred to as the "Company".

The Association respectfully urges that the petition for certiorari should be denied.

The vital practical question involved is whether the Association which has been chosen by at least 85% of the eligible employees of the Company as the bargaining representative of the employees in their relations with the Company, should be disestablished. The employees represented by the Association, numbering some 20,000 or more, are, from a practical standpoint, most vitally concerned. It is the contention of the Association, as the representative of these employees, that for the Association to be dissolved and the employees to be deprived of the right to be represented by it, would be to frustrate and set aside the wishes of at least 85% of all of the eligible employees of the Company to be represented for collective bargaining by an organization of their own choosing; that there is no substantial evidence in the record to support the conclusion that the employees, in exercising this right of self-organization and the selection of the Association as their bargaining agent, were restrained or coerced by the Company. The evidence in the record, without conflict, shows that at the time the complaint was filed, and at the time of the hearing under the complaint, the Association was, and for several years had been, completely free of any support, financial or otherwise, from the Company, and was, and had been, functioning as the bargaining agency of the employees throughout the entire territory served by the Company in the nine Southeastern States.

The only theory of the Board for the finding to the effect that the Association was company dom-

inated, or company influenced, was the fact that the Association was, in a sense, the outgrowth of one which existed prior to the passage of the National Labor Relations Act, and which, prior to the passage of the Act, was supported financially by the Company. All of the substantial evidence in the case shows, without serious conflict or dispute, that almost immediately after the Act became effective, the employees undertook to exercise the rights guaranteed them by the Act, and to form ar organization, through which to bargain collectively and to engage in concerted activities with respect to their relations with the Company. In the last analysis, the question presented in this case is whether the historical connection between the old Association of the same name, which existed prior to the passage of the Act, and the reorganized Association, which came into existence shortly after its passage, is alone sufficient to justify a finding that the present Association is company dominated, and this in spite of the undisputed evidence to the contrary.

HISTORICAL CONNECTION

Prior to the passage of the Act, which became effective July, 1935, there was an Association of the same name as the present one. This original Association was organized in 1919. It was supported financially by the Company. It had no regular roll of membership. Following the effective date of the Act, and during the Fall and early Winter of 1935, the employees of the Company, through a committee chosen by them for that purpose, met and prepared an entirely new constitution for an Association of the same name, but

substantially, and in some respects radically, different from the old organization (C.A. 24 to 29; 82 to 84).[1] In the preparation of this proposed new constitution, which was to be submitted to the employees for ratification or rejection, the committee did not have the services of an attorney, but the members of the committee themselves prepared it without legal advice or assistance (B.A. 60 and C.A. 25). In its preparation, Askew, formerly President of the old Association, was not allowed to participate. Askew had advocated the retention of the old Association with merely a change to eliminate the financial support which the Company had formerly contributed to the old Association; but the committee of the employees rejected Askew's proposals and declined to allow him to participate in the preparation of the new constitution (C.A. 29-30).

In the preparation of the proposed new constitution no representative of the Company was allowed to participate or make suggestions (C.A. 31). The proposed new constitution was submitted to the employees, and it was ratified to become effective as of February 1, 1936.

Within a few days after the effective date of the Act, and prior to the meetings of the committee of the employees to draft a new constitution, Warren, then Vice President of the Company in charge of Operations, now the President of the Company, called a meeting of all of the principal

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[1] "C.A." refers to the Appendix to the Company's brief in the Court below; "B.A." refers to the Appendix to the Board's brief in the Court below; "R" refers to the printed Record; "Tr." refers to the transcript of the record filed in the Court below, but which was not printed.

officials of the Company, and at this meeting explained the terms of the Act and gave instructions that the Act was to be strictly complied with. He also gave instructions that, through all supervisory employees of the Company, the employees were to be informed of the terms of the Act and advised that it would be the Company's policy to strictly comply with its provisions and to respect the rights of the employees. It was stipuated that these instructions were carried out (Tr. 575-576; R. 172). Thus, the employees had been fully advised of their rights under the Act before this new constitution was prepared and adopted.

In the petition for certiorari (pp. 4 and 5), mention is made of the fact that prior to the passage of the Act, and in anticipation thereof, officers of the then existing Association were permitted by the Company to make a company-wide canvass of the employees for the purpose of soliciting and raising funds with which the Association, or a successor, could operate after the Act should become effective; that the Company permitted this canvass to be made on company time and with the use of company cars, and at the expense of the Company; that this canvass resulted in raising a fund of approximately $5,000, a part of which was used in defraying the expenses of submitting the proposed new constitution for ratification. We respectfully call attention to the fact that the new, or reorganized, Association refunded every cent of these contributions to those who had made them (C.A. 34).

Pending the ratification of the new constitution, the committee of employees, realizing that there was no organization legally entitled to function in

the interim, proposed a temporary plan for meeting the emergency pending "the adoption of the revised constitution". This plan, in substance, was that a resolution (known as "Resolution No. 1") was submitted to and adopted by the employees, through the locals of the old Association. The Resolution provided for a temporary committee to take steps toward raising funds by the collection of dues and out of these funds to defray the expenses incident to the reorganization of the Association.[2]

During the period between the effective date of the Act and February 1, 1936, when the new constitution became effective, there was no bargaining carried on by the Association with the Company. A proposed joint agreement between the management and the Association as to procedure was prepared and signed, and this was submitted along with the new constitution for ratification or rejection by the employees to become effective, if ratified, on February 1, 1936 (C.A. 27; B.A. 49 to 51).

From the effective date of the new constitution, February 1, 1936, down to the present time, the reorganized Association has functioned as the bargaining representative of the employees with the exception of a period during the early part of the year 1941 when the Association, pending a vote of its members, voluntarily relinquished its right to act as the representative of the employees. This will be referred to in more detail hereinafter.

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[2] This resolution was introduced in evidence as "Association's Exhibit 7." It does not appear in the portions of the evidence which have been printed, but is in the record in the court below.

Since the adoption of the new constitution, the Association has been financed entirely with dues collected from its members. The Company has not furnished any direct financial assistance. For a short period in the beginning, the members of the Association were permitted to meet on the Company's premises without paying rent therefor. And for a short period at the beginning, the Company paid the time of employees who were acting as representatives of the Association, while bargaining with the Management, and for such time before and after such actual bargaining while these Association representatives were engaged in discussing and considering matters which were involved in bargaining conferences. All such indirect financial assistance from the Company, if it amounted to such, was entirely terminated in the early part of 1937, and there is no claim or contention that there has been any since then. For a short while after the adoption of the new constitution the Association rented from the Company a small office space which was occupied by the secretary of the Association. The evidence is undisputed that the Association paid a fair rental for this space, but the Association voluntarily terminated this arrangement and moved its offices to another building.

It is conceded that "all forms of financial support and assistance" by the Company were terminated by the Spring of 1937 (petition for certiorari, p. 8). The Association had functioned as the chosen representative of the employees without any intimation or suggestion that it was company dominated until November or December, 1940. The first intimation that it had that there

was, or would be, any claim to the contrary was when there came to the attention of the officers of the Association the fact that the International Brotherhood of Electrical Workers, affiliated with the A. F. of L., had made an unsuccessful effort to organize the employees in one department in the Shreveport, La., exchange of the Company, and had complained to the Regional Director of the Board at New Orleans, La., that the Company was dominating the Association and contributing financial and other support thereto. Upon receipt of this information, the General Assembly of the Association was called together and met in Atlanta, Georgia, in January, 1941. Following this meeting of the General Assembly, the General Executive Board of the Association met and determined to take action, pursuant to directions given it by the General Assembly, to see that the members of the Association were fully and adequately advised of the threatened charges and of their rights under the Act, and to give them an opportunity to continue, or discontinue, membership in the Association, and to express their wishes as to continuing, or not continuing, the Association as their bargaining representative. Accordingly, various bulletins and circular letters were sent out throughout the territory bringing these matters to the attention of the members of the Association; and on February 10, 1941, the General Executive Board of the Association notified the Company that because of the fact that the threatened charges "clouds this Association's right to represent the employees of the Company and that under such circumstances the best interests of the employees may not adequately be served, the Asso-

ciation will not undertake to act as their collective bargaining agent pending a canvass of its membership by signed ballot" (Respondent's Exhibit 4). After having thus severed bargaining relations between the Association and the Company, the Association arranged to take a vote of its membership. This was done by printed ballots sent out to all members of the Association, to be returned by the members direct to a firm of certified public accountants, which firm was to, and did, consolidate the ballots and certify the results. The ballots contained the following two questions, each of which was to be answered by the member and the ballot then to be signed and returned in the stamped and addressed envelope furnished for that purpose:

> "Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Company?
>
> "Do you desire to continue your membership in Southern Association of Bell Telephone Employees?"

The result of this canvass was that more than 15,000 members voted in favor of retaining the Association as their bargaining representative (R. 77 to 79).

In the meantime, after the Association had notified the Company that this canvass of the membership of the Association was to be made, and that pending the canvass of the Association would not undertake to act as the bargaining representative of the employees, the Company caused to be posted in all of its exchanges throughout the territory, a

bulletin setting out Sections 7 and 8 of the Act, and stated:

> "The Company Recognizes Its Employees' Right to Join, Form or Affiliate With Any Labor Organization of Their Own Choice and Freely to Exercise All Rights Secured Them by This Act.
>
> "The Company Guarantees Its Strict Compliance With all the Provisions of This Act and That No Employee Will be Discriminated Against or Suffer Any Other Penalty Because of His or Her Exercise of Any Right Secured by This Act.
>
> "The Company Is Not Interested in Whether Its Employees Join or Do Not Join Any Labor Organization."

These notices were posted on 2173 bulletin boards, and it was some days thereafter that the ballots were sent out to the members of the Association.

It is the contention of the Association that, in practical effect, the Association voluntarily disestablished itself pending the vote of its members, who constituted at least 85% of all of the eligible employees of the Company; and it is the contention of the Association that the result of the vote thus taken was a clear and emphatic expression of the choice of the employees, free from any Company influence whatever.

The implication that the employees could not thus exercise their rights guaranteed by the Act because of some possible vague presumption to the effect that they were under coercion, is without any support whatever in the evidence. The Act

itself contains no fixed and inflexible rule or formula as to the method by which employees are to express their choice of a bargaining representative. As is well said in the opinion of the court below:

> "* * It nowhere provides, and there is no warrant in it for the view, that preference by employees for and their selection of an unaffiliated as against a nationally affiliated organization, raises any presumption that this preference was coerced or purchased by the employer. Indeed the statute goes on a presumption exactly the contrary of this, that employees have the intelligence and character requisite for self-organization either by joining or assisting a labor organization, or forming one of their own. * *"

Evidence is wholly lacking in this case to the effect that there had ever been any hostility on the part of the Company towards labor unions, either inside or outside unions, or that there had ever been any effort on the part of the Company to favor one union over another, or any acts or conduct by it tending to intimidate or coerce its employees with respect to union membership. The record in this case clearly distinguishes it from such cases as *National Labor Relations Board vs. Link-Belt Co.*, 311 U. S. 584, and other similar cases decided by this Court.

It is respectfully submitted that this case is unique. There has been no dissatisfaction on the part of any of the employees so far as their representation by their chosen bargaining agency is concerned, and there had been no hint or sugges-

tion of any improper relations between the Association and the Company until the organizers of an outside union made an unsuccessful effort to organize a few of the employees in one of the exchanges. The employees represented by this Association feel, and respectfully urge, that if the Company or any of its officials or supervisory employees were guilty of any improper or unfair labor practice when this effort was made by these organizers, the sins of the Company should not be visited upon the employees through their chosen representative, and certainly not to the extent of a death sentence.

As was said by the court below:

> "* * The sole effect of the enforcement of such an order at this time and under the circumstances now confronting this country, would be to throw the Company and the employees generally into a state of turmoil and confusion incident to a general organizational campaign. For the Court upon this evidence at this time and under these circumstances, to decree its enforcement would be completely contrary to the policy of the Labor Relations Act as well as to public policy generally."

It is respectfully prayed that the petition for certiorari be denied.

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